MONTANA LEGISLATIVE HISTORY

Chapter 349 1999

Bill H _____ S 232 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 3-10	✓ C	Hearing Date(s) 1-27	✓ C
3-22	✓ C	2-1	✓ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out _____	___ C		

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

1/27	2nd Reading Passed	50	0
1/28	3rd Reading Passed	49	0
	Transmitted to House		
2/16	Referred to State Administration		
3/04	Hearing		
3/04	Committee Executive Action--Bill Concurred	17	0
3/05	Committee Report--Bill Concurred		
3/09	2nd Reading Concurred	92	5
3/10	3rd Reading Concurred	96	4
	Returned to Senate		
3/11	Sent to Enrolling		
3/11	Returned from Enrolling		
3/12	Signed by President		
3/13	Signed by Speaker		
3/15	Transmitted to Governor		
3/16	Signed by Governor		
3/17	Chapter Number Assigned		
	Chapter Number 90		
	Effective Date: 3/16/1999 - All Sections		

SB 232 Introduced by Depratu, et al. *LC0649 Drafter: B. Campbell*

Clarify the Types of Acts or Proceedings That Are Not Prohibited by the One-action Limitation in Foreclosure Suits;...

1/19	Introduced and 1st Reading		
1/19	Referred to Judiciary		
1/27	Hearing		
2/02	Committee Executive Action--Bill Passed as Amended	7	0
2/02	Committee Report--Bill Passed as Amended		
2/05	2nd Reading Passed	49	0
2/06	3rd Reading Passed	48	0
	Transmitted to House		
2/16	Referred to Judiciary		
3/10	Hearing		
3/22	Committee Executive Action--Bill Concurred as Amended	12	8
3/23	Committee Report--Bill Concurred as Amended		
3/27	2nd Reading Concurred	84	13
3/29	3rd Reading Concurred	88	11
	Returned to Senate with Amendments		
4/06	2nd Reading House Amendments Concurred	50	0
4/07	3rd Reading Passed as Amended by House	49	0
4/07	Sent to Enrolling		
4/08	Returned from Enrolling		
4/10	Signed by President		
4/12	Signed by Speaker		
4/12	Transmitted to Governor		
4/19	Signed by Governor		
4/20	Chapter Number Assigned		
	Chapter Number 349		
	Effective Date: 10/01/1999 - All Sections		

Senate BILL NO. 232

INTRODUCED BY R. Keenan, S. Anderson, Kitzenberg, M. Mahoney
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE TYPES OF ACTS OR PROCEEDINGS THAT DO NOT CONSTITUTE AN ACTION FOR THE PURPOSES OF PROCEDURES IN FORECLOSURE SUITS; AND AMENDING SECTION 71-1-222, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-222, MCA, is amended to read:

"**71-1-222. Proceedings in foreclosure suits.** (1) There is only one action for the recovery of debt or the enforcement of any right secured by a mortgage upon real estate, and that action must be in accordance with the provisions of this part. In the action, the court may, by its judgment, direct:

(a) a sale of the encumbered property ~~for as much of the property as may be necessary~~);

(b) the application of the proceeds of the sale, including the payment of property taxes due at the time of foreclosure; and

(c) the payment of the costs of the court, the expenses of the sale, and the amount due the plaintiff.

(2) If it appears from the sheriff's return that the proceeds are insufficient and a balance still remains due, judgment can then be docketed for the balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of the judgment debtor, as in other cases on which execution may be issued.

(3) A person holding a conveyance from or under the mortgagor of the property mortgaged or having a lien on the property, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, does not ~~need~~ have to be made a party to the action. The judgment and the proceedings are as conclusive against the party holding the unrecorded conveyance or lien as if the holding party had been made a party to the action.

(4) As used in this section, the term "action" does not include an act or proceeding:

(a) to appoint a receiver for or obtain possession of real or personal property collateral for the debt or other obligation;

(b) to enforce a security interest in or the assignment of any rents, issues, profits, or other income of any real or personal property;

(c) to enforce a mortgage or other lien on real or personal property collateral located outside this state that is security for the same debt or other right secured by real property in this state;

(d) to secure a judgment outside this state on a debt or other right secured by real property in this state and by real or personal property collateral located outside this state;

(e) for the exercise of a power of sale conferred pursuant to the provisions of 71-1-223 or a foreclosure by advertisement and sale pursuant to Title 71, chapter 1, part 3;

(f) for the exercise of a right or remedy under the Montana Uniform Commercial Code, except securing a judgment on a secured debt, including a deficiency judgment on a secured debt, in a court in Montana;

(g) for the exercise of a right or remedy under the uniform commercial code of another state;

(h) for claim and delivery of personal property pursuant to the provisions of Title 27, chapter 17;

(i) for the exercise of a right to set off a deposit account, to enforce a pledge in a deposit account pursuant to a written agreement or pledge, or to enforce a banker's lien;

(j) to draw under a letter of credit;

(k) for the recovery of damages arising from the commission of a tort or the recovery of any declaratory or equitable relief;

(l) to collect a debt or enforce a right or obligation secured by a junior mortgage or other junior lien on real property if the property has been sold to satisfy, in whole or in part, a debt or other right or obligation secured by a senior mortgage or other senior lien on the property;

(m) concerning a mortgage securing a debt or right guaranteed, to enforce an agreement with a surety or guarantor of the debt or right secured by a mortgage on real estate, if the surety or guaranty obligation is not secured by the same mortgage;

(n) relating to a proceeding in bankruptcy, including filing a proof of claim, to seek relief from an automatic stay and any other action to determine the amount or validity of a debt or right or obligation secured by a mortgage;

(o) for filing a claim or to enforce a claim disallowed pursuant to the Montana Uniform Probate Code;

(p) that does not include collection of the debt or realization of the collateral securing the debt

or other obligation;

(q) that is exempted from the provisions of this section by law; or

(r) to recover costs of suit, costs and expenses of sale, attorney fees, and other incidental relief in connection with any act or proceeding authorized in this subsection (4)."

- END -

SB 231 SPONSOR: Jabs, Reiny SHORT TITLE: Clarify the term of office for a justice of the peace
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 01/19/1999 HEARD ON: 01/26/1999
EXECUTIVE ACTION: 01/26/1999 Bill Passed -- VOTE: 6 - 0
FINAL DISPOSITION 03/17/1999 Chapter Number Assigned

SB 232 SPONSOR: DePratu, Bob SHORT TITLE: Clarify acts not prohibited by the one action limitation in foreclosure suits
REFERRED ON: 01/19/1999 HEARD ON: 01/27/1999
EXECUTIVE ACTION: 02/02/1999 Bill Passed as Amended -- VOTE: 7 - 0
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

SB 236 SPONSOR: Doherty, Steve SHORT TITLE: Revise criminal syndicalism law
REFERRED ON: 01/19/1999 HEARD ON: 01/27/1999
EXECUTIVE ACTION: 02/02/1999 Bill Passed as Amended -- VOTE: 7 - 1
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

SB 237 SPONSOR: Waterman, Mignon SHORT TITLE: Clarify employment of court reporters
REFERRED ON: 01/19/1999 HEARD ON: 02/02/1999 (S) Discussed in Committee ON: 02/04/1999
TABLED ON: 02/12/1999
FINAL DISPOSITION 03/01/1999 (S) Missed Deadline for General Bill Transmittal

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SB 243 SPONSOR: Thomas, Fred SHORT TITLE: Revise extended jurisdiction prosecution act; youth sentencing provisions
REFERRED ON: 01/20/1999 HEARD ON: 02/01/1999
EXECUTIVE ACTION: 02/12/1999 Bill Passed as Amended -- VOTE: 7 - 0
FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

SB 250 SPONSOR: Bartlett, Sue SHORT TITLE: Repeal extended jurisdiction prosecution act
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 01/21/1999 HEARD ON: 01/25/1999
EXECUTIVE ACTION: 02/12/1999 Bill Passed -- VOTE: 8 - 1
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 27, 1999 at 9:00 A.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 36, 1/22/1999; SB 232, 1/22/1999; SB 236, 1/22/1999
Executive Action: None

HEARING ON SB 232

Sponsor: SEN. BOB DEPRATU, SD 40, Whitefish

Proponents:

George Bennett, MT Bankers Assoc.

John King, First Security Bank of Kalispell, MT Independent Bankers
Bob Pyfer, MT Credit Union League
Don Bennett, First Citizens Bank
Doug Morton, Bankwest

Opponents: None

Opening Statement by Sponsor:

SEN. BOB DEPRATU, SD 40, Whitefish, read the title of the bill. He said this bill is designed to help the banking industry and the business community. He said there has been an uncertainty on what "action" means. This concern comes from when a debt is secured by real estate mortgage under Title 71 and personal property under the Universal Commercial Code. Court cases that arose in California between Title 71 and the UCC have become uncertain because of the lack of assurance of the scope and meaning of the word "action." This bill addresses the vagueness as to the scope and meaning of the term action by specifically addressing a new subsection which sets forth what the term action does not include. There are 18 terms describing "action." If a business wanted to borrow money from a bank for real property, etc. usually they would have a loan for the property and a loan for the equipment. The real property could be filed under Title 71 and the equipment under the UCC. Then perhaps the business does not survive and the financing institute can only sell the real property even though they have a lien on both. They would have to take a separate action in order to sell the equipment. Sometimes this causes the foreclosure to go on for over year or two.

Proponents' Testimony:

George Bennett, MT Bankers Assoc., rose in support of **SB 232. EXHIBIT(1)**

John King, First Security Bank of Kalispell, MT Independent Bankers, turned in testimony in favor of **SB 232. EXHIBIT(2)**

Bob Pyfer, MT Credit Union League, said this will help facilitate the lending process. He passed out a friendly amendment. **EXHIBIT(3)** He said because credit unions are member owned cooperatives, they don't have deposits, they have shares and the amendment would take care of this.

{Tape : 1; Side : A; Approx. Time Counter : 9:18 a.m.}

Don Bennett, First Citizens Bank, said when they are doing a loan to start up a business, many times they will use SBA guarantees to reduce the amount of risk on a loan. He used the example of a borrower wanting to start a business and borrows $200,000. They put $50,000 down of their own working capital, $100,000 of that borrowed money is for the purchase of real estate, etc. and the other $100,000 is for the purchase of equipment, etc. The question comes in is if the business doesn't work then the bank has an option. They can go through a judicial foreclosure which is very lengthy and costly. The small track financing act was put in place so that lenders would be able to foreclose on a lien in real estate. The problem comes in when the one action rule is mixed with a single action rule. He used the example if a borrower is defaulting on a loan and the bank gives the borrower more time. Then if the borrower still can't make the payment and the bank comes to foreclose and the borrower says no, the bank has to make a choice. If the bank starts a lawsuit to take some of the collateral which is considered an action, the bank may not have any rights to sell the real estate. They do not want to change the intent of any of the original laws, they simply want to clarify an action and know what their rights are.

Doug Morton, Bankwest, rose in support of **SB 232.**

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. RIC HOLDEN referred to **(EXHIBIT 2).** He asked how will this facilitate the lending process. **John King** used the example of a farmer or rancher who comes in for a line of credit. They can get a feeder line loan, general operating loan, mortgage loan or an equipment loan, which could constitute up to four different notes to the borrower. The operating loan and the feeder line loan are less than a year's time. Therefore, these two notes could go together. The equipment loan would stand by itself unless it is being used for 3-5 years and can be tucked into the mortgage loan. There is no reason why the equipment can't be in the mortgage, because that equipment is used all the time and it is being updated in about 5 years with new equipment. By only having two notes the bank and the borrower know exactly what they have. The way it is now they have four notes and everything is cross-collateralized and it is confusing.

SEN. WALTER MCNUTT referred to **(EXHIBIT 2).** He said in his business he has real estate and a large inventory. He asked if this was all on one security agreement and at what point could he get the inventory released from that lien or will it stay there for the term of the loan. **John King** said if the borrower comes

back in a three year period and asks to have the inventory released, the bank would probably release the inventory at that time. The most important time that they look at this is if they have a new borrower and are formulating a new business and they really cannot determine their cash flow. This gives them a better chance of surviving. Usually only one out of 10 survive the first year of a new business.

SEN. MCNUTT asked what if the borrower comes in and says he doesn't want his mortgage and inventory tied together. Can the borrower still make this request. **John King** said it doesn't do anything to this request. The seven C's of credit are the most important things with the payment of debt, etc. also being important.

CHAIRMAN LORENTS GROSFIELD asked Bill Landon what his opinions where? **Bill Landon, Attorney**, said the purpose of the one action rule is to require a creditor, when a loan gets in distress, to proceed with foreclosure before going after the general assets of the borrower. This is to prohibit a creditor from getting double recovery. This bill is drafted similar to legislation that has happened in Idaho and Nevada. It merely clarifies the type of conduct that constitutes an action for the purposes of the rule. There are 18 items of numerated conduct which the amendments say do not constitute an action and are consistent with modern day collection practices. None of them will permit a creditor to just go out and chase the debtor's assets.

SEN. REINY JABS referred to **(EXHIBIT 2)** and said there is some confusion here. **Bill Landon** said the examples in **(EXHIBIT 2)** are cross-collateralized and is the bargain between the lender and the borrower. This amendment does not affect cross-collateralization at all. Three different loans can have three different mortgages and stand alone, but most are cross-collateralized. This act would simply say that if one loan is in default and the creditor is going to proceed that there are a number of things that the creditor can do, all of which are related to the enforcement of mortgage remedies.

{Tape : 1; Side : A; Approx. Time Counter : 9:41 a.m.}

SEN. MCNUTT referred to **(EXHIBIT 2)**. He said he was under the impression that one action would require one security agreement. If the note had been paid down and he wanted his inventory free and clear, how would he get that done. Does the example of Mr. King's really apply in **(EXHIBIT 2)**. **Bill Landon** said the example does reflect what often happens in an agricultural scenario. There is nothing in the one action rule as it exists that would require that everything be put under one loan. If a producer came

in and wanted to renew their operating line of credit there are a couple of ways that can be done. It can be done with a separate security agreement, or under two notes that are cross-collateralized. If there is a foreclosure, this act would is make it clear that all of the collateral gets brought into one action.

CHAIRMAN GROSFIELD said there is only one action for recovery of debt and why was this ever done in the first place. **Bill Landon** said it is a product of field code. Its purpose was if a creditor and a borrower sit down and they negotiate a secured transaction and that loan gets into trouble, it precedes against the collateral first.

CHAIRMAN GROSFIELD asked if they aren't going from one action to 18 and from the borrowers perspective they could get hit in 18 different ways. **Bill Landon** said it would probably never happen like that. He said if a loan gets in trouble right now under the uniform commercial code, there is personal and real property and the rules don't fit together. Right now the bank could go out and repossess the car. If they wanted to get court assistance to get that car that would constitute as an action and then this results in a waiver of real estate collateral. But it they don't get a judgement from the courts, it is not considered an action. This one action rule does apply to deeds of trust which are foreclosed non-judicially. And this is not an action for the purpose of the rules, etc.. If one looks at the 18 components, they relate to a provision type of remedy that is related to foreclosure remedies. This will also help in multi-state loans, etc..

{Tape : 1; Side : B; Approx. Time Counter : 9:55 a.m.}

SEN. SUE BARTLETT asked if there had been any cases in Montana that have dealt with this. **Mr. Landon** said no. He explained some small cases that may deal with this, but there are none at the Supreme Court level in Montana.

SEN. AL BISHOP said he has foreclosed on hundreds of mortgages and he never thought this referred to just one action, but to one type of action. How could he get away with that. **Mr. Landon** said it is very complicated, the one action rule does say there is only one action. But concerning real estate this is often not the case as mortgage loans are also secured by personal property and one action is difficult is this area.

SEN. BISHOP said if there is a mortgage on real estate and personal property has secured interest in that then will they have to choose which one to do. **Bill Landon** said presently, they can foreclose it all on one lawsuit and there is only one action.

This would permit them to use the UCC with different remedies before having to deal with the one action rule.

SEN. MCNUTT said what if they have a real estate mortgage and the personal guarantee is represented by an investment portfolio, etc. He asked if they would have to foreclose on the real estate to satisfy the foreclosure or can that be taken out of the investment portfolio. **Bill Landon** said any standard guaranteed agreement is a completely independent obligation. If it is not secured by the real estate collateral it won't be. But under this amendment a lender could proceed against that guarantee. A guarantee is a completely independent obligation. A lender should be able to proceed against the guarantor under that example.

Closing by Sponsor:

SEN. DEPRATU said it is important that financial institutions and businesses in the agriculture community have an understanding of procedures. It is important to keep capital available to the community and for financial institutions to protect their collateral when they have to.

{Tape : 1; Side : B; Approx. Time Counter : 10:08 a.m.}

HEARING ON SB 36

Sponsor: SEN. BOB KEENAN, SD 38, Bigfork

Proponents:

Monte Jones, Salvation Army
Steve Stangart, Touch of Grace Health Center
Jerry Loendorf, MT Medical Assoc.
Mary McCue, MT Academy of Family Physicians
Jim Ahrens, MT Hospital Assoc.
Steve Pilcher, MT Dental Hygienist Assoc.
Todd Thun, MT Nurses Assoc.

Opponents:

Al Smith, MT Trial Lawyers Assoc.
Rebecca Moog, MT Women's Lobby

Informational Testimony:

Michael Spence, Self

MONTANA SENATE
1999 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL

DATE 1-27-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	X		
SEN. STEVE DOHERTY	X		
SEN. DUANE GRIMES	X		
SEN. MIKE HALLIGAN	X		
SEN. RIC HOLDEN	X		
SEN. REINY JABS	X		
SEN. WALT MC NUTT	X		
SEN. AL BISHOP,VICE CHAIRMAN	X		
SEN. LORENTS GROSFIELD, CHAIRMAN	X		

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 1-27-99
BILL NO. SB 232

MONTANA BANKERS ASSOCIATION

GEORGE T. BENNETT, attorney for MBA, in support of SENATE BILL 232.
483 So. Park Avenue
Helena, Montana 59601 406-443-4093

1999 (56th) Legislative Session

SENATE BILL 232-Introduced; Chief Sponsor=DePratu, R

Subject: Debt collection and the "one action rule."

Synopsis: This bill amends Section 71-1-222 MCA to define the term "action."

Section 71-1-222 (set out in the bill) provides in pertinent part as follows:

> "71-1-222. *Proceedings in foreclosure suits.* (1) There is only one action for the recovery of debt or the enforcement of any right secured by mortgage upon real estate, and that action must be in accordance with the provisions of this part." (Emphasis added)

Section 71-1-222 finds its origins in the Bannack Statutes of 1867 and was apparently copied from the Field Code adopted in California. The "one action" rule is intended to require a creditor to join in "one action" all claims against the same debtor to avoid a "multiplicity of suits."

Montana adopted the Uniform Commercial Code (UCC) in 1959, without amending 71-1-222, and the UCC covers debt secured by personal property and fixtures and Section 30-9-501(4) of the UCC provides in pertinent part:

> "30-9-501. *Default -- procedure when security agreement covers both real and personal property.*" ***
>
> "(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case the provisions of this part do not apply." (Emphasis added)

Section 30-9-508 of the UCC provides:

> "30-9-508. *Foreclosure of security interests in personal property.* An action for the foreclosure of a security

interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure by action of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest, but the remedial scope of proceedings for the foreclosure of interests subject to this chapter is governed by this part." (Emphasis supplied)

Thus the UCC, adopted in 1959, established new procedures for the collection of debt secured by personal property and fixtures in which the creditor had a "security interest."

However, until amendment in 1963, Section 71-1-222 still covered personal property in conflict with the UCC, and required that one action alone be initiated "for the recovery of debt, or the enforcement of any right secured by mortgage upon real estate or personal property..."

A 1963 legislative amendment by the legislature struck the reference to personal property from Section 71-1-222, so that the enforcement scheme of the UCC would apply without conflicting with the "one action" rule of 71-1-222.

Never-the-less uncertainty has continued to exist in the situation where the debt is secured by real estate mortgage under Title 71 and by personal property or fixtures under the UCC, because of the uncertainty of the meaning of the word "action" as used in 71-1-222.

In fact the author of a Montana Law Review article recommended in 1988 that "legislative reforms" were needed; see "The Montana Judicial and Non-Judicial Foreclosure Sale: Analysis and Suggestions for Reform," Dietick, 49 Montana Law Review, No. 2, Summer 1988.

Because of court cases, mainly arising in California, the relationship between Title 71 and the UCC has become uncertain because of the lack of certainty as to the scope and meaning of the word "action" as construed by the courts. See for example Epstein v. Enterprise Leasing Corp., 189 Cal. App. 3rd 834, 234 Cal. Rptr 676 (1987), where the court held that where a creditor files a provisional remedy action and obtains claim and delivery of personal property to preserve its value pending foreclosure, this constitutes an "action" and the creditor waives any right to sue to foreclose the real estate mortgage.

To address this problem as to the meaning of the word "action" California has amended it's Uniform Commercial Code several times only to cause more disputes and litigation; see "The U. C. C. Mixed Collateral Statute-Really Been Lost?" 36 UCLA Law Review 7.

The best approach is that taken by the State of Idaho, see attached Idaho Statutes, Title 6, Chapter 1, Section 6-101.

This bill addresses the uncertainty as to the scope and meaning of the term "action" by specifically setting out in a new subsection (4), what the term "action" does not include.

The new subsection (4) amended into 71-1-222 by this bill sets out alphabetically (a) through and including (r) the 18 situations not constituting an "action" for the purposes of the "one action" rule so as to bring certainty to this area for courts, creditors, and debtors.

The bill as to the definition of what does not constitute an "action" as stated, was patterned after statutes in other states, mainly Idaho, and a copy of Idaho Statutes is attached; and the language of this bill is almost word-for-word the Idaho statute, Title 6, Chapter 1, Section 6-101, Idaho Statutes.

Taking subsection (4) item by item, the following is an explanation why the described activities should not constitute an "action" under the "one action" rule:

(a) taking possession of property, either through a receiver or directly, without bringing a foreclosure action, should not cause a waiver of the later right to foreclose;

(b) the right to receive "rents, issues, profits, or other income" from either real or personal property is an intangible right separate and apart from the property and action to collect the same should not affect the right to foreclose on the property that produces the income;

(c) and (d) enforcing a right in property located in an other state requires resort to that state's courts and under that state's law and therefore should not affect rights to proceed against property located in Montana;

(e) nonjudicial sales under a power of sale granted by the debtor should not bar a judicial proceeding to foreclose a security interest or mortgage;

(f) and (g) the exercise of any rights under the UCC, other than action to secure a judgment, or proceedings under the UCC of another state as to property located in that other state, should not bar proceedings in foreclosure as to property located in Montana and in a Montana court;

(h) taking property under a claim and delivery action to preserve value prior to foreclosure, should not bar subsequent judicial action to foreclose; see---Epstein v. Enterprise Leasing Corp., 189 Cal. App. 3rd 834, 234 Cal. Rptr 676 (1987) cited

above;

(i) rights in deposit accounts depend generally upon possession of such account and do not involve any "proceeding" to obtain title to such accounts, thus taking possession or exercising such rights should not bar further lawful collection proceedings;

(j) letters of credit are issued by third parties to secure debts and obligations, and actions against the issuer of a letter of credit should not bar action against the debtor or collateral property;

(k) where a creditor seeks tort damages for damage to collateral property or for injunctive or declaratory action to protect such property, such protective action should not bar subsequent foreclosure;

(l) where the person holding the first mortgage ("senior mortgage") has foreclosed and sold the property in payment of the debt, the junior lien holder should not be barred from taking action other than against the foreclosed property;

(m) guarantee agreements are executed by third parties and are similar to letters of credit in requiring the guarantor to pay the debt in case the debtor does not; thus action against the guarantor should not bar action against the debtor if the surety or guarantor is not a party to the mortgage;

(n) actions taken in bankruptcy to secure the priority of a debt should not bar proceedings to foreclose;

(o) claims made against a decedent's estate in a probate proceeding in Montana in order to assert a debt should not bar proceedings to collect the debt if the creditor's claim is denied or the claim not paid;

(p) covers other actions that do not include collection of the debt or realization of the collateral;

(q) covers actions that might be otherwise exempt under a statute or court decision; and

(r) actions to recover costs of suit, costs and expenses of sale, attorney fees, and other incidental relief in connection with any act or proceeding authorized by subsection (4) would not be considered an action to collect the underlying debt.

#5

Idaho Statutes

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Available Reference: ***Search Instructions***.

TITLE 6
ACTIONS IN PARTICULAR CASES
CHAPTER 1
FORECLOSURE OF MORTGAGES AND
OTHER LIENS

6-101. PROCEEDINGS IN FORECLOSURE -- CONSTRUCTION OF SECTION -- MEANING OF "ACTION" -- EFFECT OF FORECLOSURE ON HOLDER OF UNRECORDED LIEN. (1) There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct a sale of the incumbered property (or so much thereof as may be necessary) and the application of the proceeds of the sale to the payment of the costs of the court and the expenses of the sale, and the amount due to the plaintiff; and sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in the case of sales under execution; (and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt), and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may be issued.

(2) The provisions of this section must be construed in order to permit a secured creditor to realize upon collateral for a debt or other obligation agreed upon by the debtor and creditor.

(3) As used in this section, an "action" does not include any of the following acts or proceedings:

(a) To appoint a receiver for, or obtain possession of, any real or personal property collateral for the debt or other obligation;

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property;

(c) To enforce a mortgage or other lien upon any real or personal property collateral located outside of the state which is security for the same debt or other obligation;

(d) To secure a judgment outside of this state on a debt or other obligation secured by real property in this state and by real or personal property collateral located outside this state;

(e) For the exercise, pursuant to section 45-1505, Idaho Code, of a power of sale conferred pursuant to section 45-1503, Idaho Code;

(f) For the exercise of any right or remedy authorized by:

(i) The Idaho uniform commercial code, title 28, Idaho Code, except the securing of a judgment on the secured debt, including a deficiency judgment, in a court in Idaho; or

(ii) The uniform commercial code as enacted in any other state;

(g) For claim and delivery of personal property pursuant to chapter 3, title 8, Idaho Code;

(h) For the exercise of any right to set off a deposit account, or to enforce a pledge in a deposit account pursuant to a written agreement or pledge or to enforce a banker's lien;

(i) To draw under a letter of credit;

(j) To collect any debt, or enforce any obligation or right, secured by a mortgage or other lien on real property if the property has been

sold to a person other than the creditor to satisfy, in whole or in part, a debt or other obligation or right secured by a senior mortgage or other senior lien on the property;

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt or other obligation;

(l) For filing a claim pursuant to the Idaho uniform probate code, title 15, Idaho Code, or to enforce such a claim which has been disallowed;

(m) Which does not include the collection of the debt or enforcement of the obligation or realization of the collateral securing the debt or other obligation;

(n) Which is exempted from the provisions of this section by specific statute;

(o) To recover costs of suit, costs and expenses of sale, attorney fees and other incidental relief in connection with any action authorized in this subsection.

(4) No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

The Idaho Code is the property of the state of Idaho, and is copyrighted by Idaho law, I.C. § 9-350. According to Idaho law, any person who reproduces or distributes the Idaho Code for commercial purposes in violation of the provisions of this statute shall be deemed to be an infringer of the state of Idaho's copyright.

2

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 1-27-99
BILL NO. SB 232

Mr. Chairman, Members of the Committee:

For the record, my name is John R. King. I am the President of First Security Bank of Kalispell and President Elect of the Montana Independent Bankers. I appear this morning before your committee in support of **Senate Bill 232**.

There has been numerous times in my banking career that the "One Action Rule" has been questioned by my Board of Directors, Credit Officers, and myself as what to do when a borrower is willing to allow the bank a security interest in real and personal property to secure a loan.

"Example 1" Suppose a farmer wants to borrow funds to recapitalize his farm. He wants to put the recapitalization expense over a long term, and the loan is then secured by a mortgage. The farmer uses the funds to purchase machinery, equipment and cattle. The farmer is willing to allow the bank a security interest in the purchases. Under the existing law, the bank has to then consider which would be best for the bank; just having a security interest in the real property or a security interest in all three (3) properties. If the bank takes the position that it wants a security interest in all three (3) notes (one for the mortgage, one for the machinery and equipment, and the remaining one for the cattle then all three notes will be cross-collateralized). By doing this, the bank is protecting itself from other creditors and it also protects the farmer and bank from 3rd party lawsuits. Under the existing law in the case of default, the bank may have to release the additional collateral that cross-collateralized the 3 notes. If there is a liquidation of the collateral securing each note and if there is a deficiency remaining, the bank will then take a loss on one or all of the notes.

Wouldn't it be a lot simpler to allow the bank to use one note using the same collateral? In my example the debtor and bank would have a complete understanding as to what collateral is securing the note. If there were a default, the bank can proceed against all the collateral at once to try and satisfy the debt and any remaining collateral would go to the debtor free of liens.

"EXAMPLE 2" Many times when the borrower requests a loan, they request the bank to use a security interest on real property to extend the terms of repayment and to be able to predict cash flow. The borrower also is willing to allow the bank a security interest in the personal property (i.e. inventory) to help secure the loan. Under normal banking practices the bank may render a real property loan for a term of 5 to 20 years and inventory loans for a term of 3 to 5 years. If the majority of collateral were real property, it would be again a lot simpler if there was only **one note with 2 security interests**, then to have **2 notes and 2 security interests.**

BY SUPPORTING AND PASSING SENATE BILL 232 IT WOULD REALLY CLAIFY TO THE COURTS, CREDITORS AND DEBTORS THE ONE ACTION RULE.

THANK YOU FOR YOUR TIME, AND DO YOU HAVE ANY QUESTIONS?

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 1-27-99
SB NO. SB 232

PROPOSAL AMENDMENT
SENATE BILL NO. 232

1. Page 2, line 14

   Following: "off a deposit"

   Insert: "or share"

   Following: "in a deposit"

   Insert: "or share"

2. Page 2, line 15

   Following: "enforce a"

   Strike: "banker's"

   Insert: "financial institution's statutory"

DATE 1-27-99

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: S.B. 36, 232, 236

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
GEORGE BENNETT	443-4093	MONT. BANKERS ASS'N.	232	X	
JOHN CADBY	443 4121	" " "	232	X	
Tom King	755-4271	1ST Security Bank & MEB	232	X	
DON BENNETT	892-6800	First Citizens Bank	232	X	
DOUG MORTON	458-2280	BANKWEST	232	X	
Jerry Loendorf	442-6350	Mt. Med. Ass'n	36	X	
John Connor	444-2026	MT CTY Atty Assn	236	X	
Rebecca Moog	—	MWL	36		X
Al Smith	443-3124	MTLHA	36		X
TODD THUN	442-6740	MNA	56	X	
Bob Pyfer	442-9081	MT Credit Union League	232	X	
Scott McCulloch	457 1929	ACLU	236		X
Con Metropulo	442-8560	FJBC	236	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 1, 1999 at 10:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Ric Holden (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 243, SB 258, 1/30/1999
Executive Action: SB 232, SB 236, SB 257

HEARING ON SB 243

Sponsor: **SEN. FRED THOMAS, SD 31, Stevensville**

Proponents: **John Larson, District Judge from Missoula**

Opponents: **None**

EXECUTIVE ACTION ON SB 232

Ms. Lane explained that the amendments SB023201.avl, **EXHIBIT(7)**, were at the request of **Bob Pyfer, Montana Credit Union League.**

Motion/Vote: **SEN. BARTLETT** moved that **SB 232 BE AMENDED. Motion carried unanimously.**

Motion: **SEN. MCNUTT** moved that **SB 232 DO PASS AS AMENDED.**

Discussion:

SEN. BARTLETT stated that one of the exceptions to what would be considered an action is found on page 2, line 7, (e) which talks about an action for the exercise of a power of sale or foreclosure by advertisement and sale, both of which relate to real property. She asked for further clarification of the action involved in (e). **George Bennett, Montana Bankers Association,** explained that this referred to private sales. Under the UCC, collateral can be sold at a private sale as long as it is commercially reasonable. Under the Small Tract Financing Act, the trustee can sell at a private sale but the creditor then loses the right to obtain a deficiency judgment. Those have been determined either by court action or by the determination in other states not to impinge on the right to collect a debt through a foreclosure action.

SEN. BARTLETT stated that it was her understanding that the power of sale, 71-1-223, referred to a mortgage rather than a UCC action. **Mr. Bennett** clarified that if the borrower agrees to grant to the lender a power of sale under which the lender then can conduct a private sale, that private sale is then conducted and the borrower is protected because that sale must be reasonable and there is no right of deficiency. The creditor receives only what is realized from the sale of the collateral and can no longer pursue the debtor for any deficiency that results. He remarked that the examples given by the bankers during the hearing did not directly relate to the legislation.

Vote: Motion **carried unanimously - 7-0.**

EXECUTIVE ACTION ON SB 236

Motion: **SEN. DOHERTY** moved that **SB 236 BE AMENDED - SB0023602.avl, EXHIBIT(8).**

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 2-1-99
BILL NO. SB232

Amendments to Senate Bill No. 232
1st Reading Copy

For the Senate Judiciary Committee
Suggested by Bob Pyfer of the Mt. Credit Union League

Put into Council form by Valencia Lane
January 28, 1999

1. Page 2, line 14.
Following: the first "deposit"
Insert: "or share"
Following: the second "deposit"
Insert: "or share"

2. Page 2, line 15.
Following: "enforce a"
Strike: "banker's"
Insert: "financial institution's statutory"

- END -

MONTANA SENATE
1999 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL

DATE 2-1-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	✓		
SEN. STEVE DOHERTY	✓		
SEN. DUANE GRIMES	✓		
SEN. MIKE HALLIGAN	✓		
SEN. RIC HOLDEN			✓
SEN. REINY JABS	✓		
SEN. WALT MC NUTT	✓		
SEN. AL BISHOP,VICE CHAIRMAN	✓		
SEN. LORENTS GROSFIELD, CHAIRMAN	✓		

SENATE STANDING COMMITTEE REPORT

February 1, 1999

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 232** (first reading copy -- white) **do pass as amended.**

Signed: Lorents Grosfield
Senator Lorents Grosfield, Chair

And, that such amendments read:

1. Page 2, line 14.
Following: the first "deposit"
Insert: "or share"
Following: the second "deposit"
Insert: "or share"

2. Page 2, line 15.
Following: "enforce a"
Strike: "banker's"
Insert: "financial institution's statutory"

- END -

Committee Vote:
Yes 7, No 0.

251145SC.srf

SB 214 SPONSOR: Bartlett, Sue SHORT TITLE: Revise laws relating to sheriff's levy and sale for collection of taxes
REFERRED ON: 02/16/1999 HEARD ON: 03/02/1999
EXECUTIVE ACTION: 03/08/1999 Bill Concurred as Amended -- VOTE: 11 - 9
FINAL DISPOSITION 03/30/1999 Chapter Number Assigned

SB 215 SPONSOR: Bartlett, Sue SHORT TITLE: Increase maximum negligent homicide incarceration penalty
REFERRED ON: 02/16/1999 HEARD ON: 03/11/1999
EXECUTIVE ACTION: 03/18/1999 Bill Concurred -- VOTE: 10 - 7
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

SB 221 SPONSOR: Doherty, Steve SHORT TITLE: Clarify showing required for discovery of constitutionally protected material
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 02/16/1999 HEARD ON: 03/08/1999
EXECUTIVE ACTION: 03/18/1999 Bill Concurred -- VOTE: 15 - 2
FINAL DISPOSITION 04/16/1999 Chapter Number Assigned

SB 222 SPONSOR: Doherty, Steve SHORT TITLE: Eliminate certain statutes conflicting with supreme court rules on law practice
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 02/16/1999 HEARD ON: 03/08/1999
EXECUTIVE ACTION: 03/09/1999 Bill Concurred as Amended -- VOTE: 14 - 6
FINAL DISPOSITION 03/30/1999 Chapter Number Assigned

SB 230 SPONSOR: Grimes, Duane SHORT TITLE: Clarify place of trial for action against county
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 02/16/1999 HEARD ON: 03/08/1999
EXECUTIVE ACTION: 03/08/1999 Bill Concurred -- VOTE: 17 - 2
FINAL DISPOSITION 03/23/1999 Chapter Number Assigned

SB 232 SPONSOR: DePratu, Bob SHORT TITLE: Clarify acts not prohibited by the one action limitation in foreclosure suits
REFERRED ON: 02/16/1999 HEARD ON: 03/10/1999
EXECUTIVE ACTION: 03/22/1999 Bill Concurred as Amended -- VOTE: 12 - 8
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 10, 1999 at 8:00 A.M., in Room 312 - 2 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 190, SB 153, SB 232, SB 171, 3/2/1999

John Cadby, Montana Banker's Association
{Tape : 1; Side : B; Approx. Time Counter : 28 - 45}
Bob Pfeiffer, Montana Credit Union League
{Tape : 1; Side : B; Approx. Time Counter : 45 - 75}
Keith Colbo, Montana Independent Bankers Association
{Tape : 1; Side : B; Approx. Time Counter : 75 - 83}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 83 - 436}

Closing by Sponsor:

Senator Halligan made closing statements.
{Tape : 1; Side : B; Approx. Time Counter : 436 - 550}

HEARING ON SB 232

Sponsor:

Senator DePratu presented SB 232.
{Tape : 2; Side : A; Approx. Time Counter : 0 - 22}

Proponents:

George Bennett, Montana Banker's Association
{Tape : 2; Side : A; Approx. Time Counter : 22 - 86}
EXHIBIT(4)
EXHIBIT(5)
EXHIBIT(6)

Gerald Kreig, Attorney
{Tape : 2; Side : A; Approx. Time Counter : 86 - 151}
Bob Pfeiffer, Montana Credit Union Leagues
{Tape : 2; Side : A; Approx. Time Counter : 151 - 163}
Keith Colbo, Montana Independent Bankers Association
{Tape : 2; Side : A; Approx. Time Counter : 163 - 167}
John Cadby, Montana Bankers Association
{Tape : 2; Side : A; Approx. Time Counter : 167 - 180}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 180 - 433}

Closing by Sponsor:

Senator DePratu made closing statements.
{Tape : 2; Side : A; Approx. Time Counter : 433 - 550}

HEARING ON SB 179

Sponsor:

Senator Holden presented SB 179.
{Tape : 2; Side : B; Approx. Time Counter : 0 - 22}

Proponents:

Greg Petesch, Code Commissioner
{Tape : 2; Side : B; Approx. Time Counter : 22 - 67}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 67 - 110}

Closing by Sponsor:

Senator Holden made closing statements.
{Tape : 2; Side : B; Approx. Time Counter : 110 - 124}

EXHIBIT 4
3/10/69
232

MONTANA BANKERS ASSOCIATION

GEORGE T. BENNETT, attorney for MBA, in support of SENATE BILL 232.
483 So. Park Avenue
Helena, Montana 59601 406-443-4093

1999 (56th) Legislative Session

SENATE BILL 232-Introduced; Chief Sponsor=DePratu, R

Subject: Debt collection and the "one action rule."

Synopsis: This bill amends Section 71-1-222 MCA to define the term "action."

Section 71-1-222 (set out in the bill) provides in pertinent part as follows:

> **"71-1-222. *Proceedings in foreclosure suits.* (1) There is only one action for the recovery of debt or the enforcement of any right secured by mortgage upon real estate, and that action must be in accordance with the provisions of this part." (Emphasis added)**

Section 71-1-222 finds its origins in the Bannack Statutes of 1867 and was apparently copied from the Field Code adopted in California. The "one action" rule is intended to require a creditor to join in "one action" all claims against the same debtor to avoid a "multiplicity of suits."

Montana adopted the Uniform Commercial Code (UCC) in 1959, without amending 71-1-222, and the UCC covers debt secured by personal property and fixtures and Section 30-9-501(4) of the UCC provides in pertinent part:

> **"30-9-501. *Default -- procedure when security agreement* [illegible] *property.*" ***

Exhibit # 4
From George T. Bennett (MBA attorney)
The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

covers both real and personal proceed under this part as may proceed as to both the in accordance with his rights real property, in which case not apply." (Emphasis added)

(14 pges of typed text from various Sources)

:

:ity interests in personal :eclosure of a security

EXHIBIT 5
3/10/99
232

SENATE BILL 232, Third Reading: Amendment.

Amend page 3, line 3 by striking the "or" at the end of the line, Strike the period at the end of line 5, and add "; or" and add the following new subparagraph:

"(s) for recovery of a debt or enforcement of any right secured by a mortgage when the mortgage security in this state has become valueless through no fault of the mortgagee."

REASON FOR THE AMENDMENT: The list of items deemed not to constitute collection of a debt secured by a mortgage, as set out in subparagraphs (a) through and including (r), did not contain an item established by a series of Montana Supreme Court decisions, "where the security has become worthless." These decisions are set out in the following from the annotations to the Montana Code Annotated:

"Failure of Security:

This section (71-1-222 MCA) does not prohibit a personal action when the security given the creditor has become valueless without any fault on his part. Nor is it necessary for him to foreclose his mortgage in order to prove that his security has become valueless. He may prove the value of the security in any way possible. Further, in an action on the debt, the creditor may secure an attachment under the provisions of 27-18-201. Bailey v. Hansen, 105 M 552, 74 P2d 438 (1937).

The purpose of this section is to require mortgagees to exhaust their security before having recourse to the general assets of the debtor. However, where the mortgagee has lost his security in any manner, other than deliberately parting with it for the purpose of evading the provisions of the section, he may proceed against the mortgagor on the debt. Bailey v. Hansen, 105 M 552, 74 P2d 438 (1937); Lepper v. Jackson, 102 M 259, 57 P2d 768 (1936); Leffek v. Luedeman, 95 M 457, 27 P2d 511, 91 ALR 286 (1933)."

See also the explanation given in the excerpt from the Law Review Article, The Montana Judicial and Non-Judicial Foreclosure Sale; Analysis and Suggestions for Reform, David J. Dietrich, Montana Law Review Summer 1988, Volume 49 No. 2.

6
3/10/99
232

THE MONTANA JUDICIAL AND NON-JUDICIAL FORECLOSURE SALE: ANALYSIS AND SUGGESTIONS FOR REFORM

David J. Dietrich*

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Exhibit # 6
From George Bennett MBA Attorney
The full exhibit is available from:
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Helena, MT 59602-1201
Phone: (406) 444-4775

48 pges

pges 287 – 331
of Mt. Judicial + non-judicial

* ... ia; B.A., Whitman Col-

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY COMMITTEE

DATE 3/10/99

NAME	PRESENT	ABSENT	EXCUSED
Robert C. Clark, chair	✓		
Dan McGee, vice chair	✓		
Diana Wyatt, vice chair	✓		
Chris Ahner	✓		
Shiell Anderson	✓		
Paul Clark	✓		
Aubyn A. Curtiss	✓		
Bill Eggers	✓		
Tom Facey	✓		
Steven Gallus	✓		
Gail Gutsche	✓		
Joan Hurdle	✓		
Rick Jore	✓		
Sam Kitzenberg	✓		
Brad Molnar	✓		
Mark Noenning	✓		
Jim Shockley	✓		
Loren Soft	✓		
Carol Williams	✓		
Cindy Younkin	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE 3/10/99

BILL NO. SB 232 SPONSOR(S) Sen. DePratter

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
P	Gerald Krieg	Billings MT	Self.
P	GEORGE BENNETT	BOX 204 HELENA 59624	MONT. BANKERS ASSN.
P	JOHN CADBY	HELENA	" " "
P	Bob Pyfer	Helena	MT Credit Unions League
P	Keith L. Colbo	Helena	MIB

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 22, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Diana Wyatt, Vice Chairman (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 251, SB 372, SB 486, 3/15/1999

Executive Action: SB 326-Tabled, SB 232-Be Concurred in as amended, SB 404-Be Concurred in, SB 416-Be Concurred in as amended.

HEARING ON SB 251

Sponsor:

Senator Halligan presented SB 251.
{Tape : 1; Side : A; Approx. Time Counter : 32 - 54}

Proponents:

Joan Cassidy, Montana Addiction Services
{Tape : 1; Side : A; Approx. Time Counter : 54 - 130}
EXHIBIT(1)
Robert Throssell, Montana Magistrates Association
{Tape : 1; Side : A; Approx. Time Counter : 130 - 160}
Candace Payne, Rimrock Foundation
{Tape : 1; Side : A; Approx. Time Counter : 160 - 171}
Brenda Nordlund, Dept. of Justice
{Tape : 1; Side : A; Approx. Time Counter : 171 - 188}
Charles Brooks, DUI Task Force
{Tape : 1; Side : A; Approx. Time Counter : 188 - 207}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 207 - 412}

Closing by Sponsor:

Senator Halligan made closing statements.
{Tape : 1; Side : A; Approx. Time Counter : 412 - 451}

HEARING ON SB 372

Sponsor:

Senator Halligan presented SB 372.
{Tape : 1; Side : B; Approx. Time Counter : 0 - 37}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 247}

Closing by Sponsor:

Senator Halligan made closing statements.
{Tape : 2; Side : A; Approx. Time Counter : 247 - 267}

EXECUTIVE ACTION ON SB 404

Motion/Vote: REP. SHOCKLEY moved that SB 404 BE CONCURRED IN. Motion carried 19-1 with Jore voting no.
{Tape : 2; Side : A; Approx. Time Counter : 267 - 374}

EXECUTIVE ACTION ON SB 416

Motion: REP. YOUNKIN moved that SB 416 BE CONCURRED IN.
Motion/Vote: REP. MOLNAR moved that SB 416 BE AMENDED. Motion carried unanimously.
Motion/Vote: REP. FACEY moved that SB 416 BE CONCURRED IN AS AMENDED. Motion carried carried unanimously.
{Tape : 2; Side : A; Approx. Time Counter : 374 - 451}

EXECUTIVE ACTION ON SB ~~233~~ 232

Motion: REP. AHNER moved that SB 232 BE CONCURRED IN.
Motion/Vote: REP. ANDERSON moved that SB 232 BE AMENDED. Motion carried 19-1 with McGee voting no.
Motion: REP. ANDERSON moved that SB 232 BE CONCURRED IN AS AMENDED.
Motion/Vote: REP. NOENNIG moved that SB 232 BE AMENDED. Motion carried unanimously.

EXHIBIT(4)

Motion/Vote: REP. ANDERSON moved that SB 232 BE CONCURRED IN AS AMENDED. Motion carried 12-8 with P. Clark, Curtiss, Eggers, Gallus, Gutsche, Hurdle, Williams, and Wyatt voting no.
{Tape : 2; Side : A; Approx. Time Counter : 451 - 550}
{Tape : 2; Side : B; Approx. Time Counter : 0 - 433}

EXECUTIVE ACTION ON SB 326

Motion: REP. FACEY moved that SB 326 BE CONCURRED IN.
Motion: REP. ANDERSON moved that SB 326 BE AMENDED.
Motion/Vote: REP. ANDERSON moved that SB 326 BE TABLED. Motion carried 12-7.
Rep. Wyatt absent, no proxy on this vote only.

EXHIBIT 4
DATE 3/22/99
SB 232

Amendments to Senate Bill No. 232
3rd Reading Copy

Requested by Representative Mark Noennig

For the House Judiciary Committee

Prepared by John MacMaster
March 12, 1999 (3:51PM)

1. Title, line 5.
Strike: "DO NOT CONSTITUTE AN ACTION FOR THE PURPOSES OF PROCEDURES"
Insert: "ARE NOT PROHIBITED BY THE ONE-ACTION LIMITATION "

2. Page 1, line 28.
Strike: "As used in this section, the term "action" does not include"
Insert: "The one-action limitation in this section does not prohibit"

- END -

4

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY COMMITTEE

DATE 3/22/09

NAME	PRESENT	ABSENT	EXCUSED
Robert C. Clark, chair			
Dan McGee, vice chair			
Diana Wyatt, vice chair			
Chris Ahner			
Shiell Anderson			
Paul Clark			
Aubyn A. Curtiss			
Bill Eggers			
Tom Facey			
Steven Gallus			
Gail Gutsche			
Joan Hurdle			
Rick Jore			
Sam Kitzenberg			
Brad Molnar			
Mark Noenning			
Jim Shockley			
Loren Soft			
Carol Williams			
Cindy Younkin			

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

HOUSE JUDICIARY XSUBCOMMITTEE

DATE 3/22/95 BILL NO. _____ NUMBER _____

MOTION: SB 232 Do Concur as Amended Pass

NAME	AYE	NO
ROBERT CLARK, CHAIRMAN	✓	
DAN MC GEE, VICE CHAIR	✓	
DIANA WYATT, VICE CHAIR		✓
CHAIR AHNER	✓	
SHEILL ANDERSON	✓	
PAUL CLAKR		✓
AUBYN CURTISS		✓
BILL EGGERS		✓
TOM FACEY	✓	
STEVE GALLUS		✓
GAIL GUNSCHE		✓
JOAN HURDLE		✓
RICK JORE	✓	
SAM KITZENBERG	✓	
BRAD MOLNAR	✓	
MAKR NOENNING	✓	
JIM SHOCKLEY	✓	
LOREN SOFT	✓	
CAROL WILLIAMS		✓
CINDY YOUNKIN	✓	
	12	6

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3/22/99

I request to be excused from the _____ Committee meeting this date because of other commitments. I desire to leave my proxy vote with _____.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
SB 404	X	
SB 416	X	
SB 232		X
SB 326	X	
~~SB 163~~		~~X~~

SENATE BILL/AMENDMENT	*AYE*	*NO*

Rep. Duane Wright
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3/2/99

I request to be excused from the House Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Tom Facey.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
SB		

SENATE BILL/AMENDMENT	*AYE*	*NO*
232		X
163	X	
AMD		
AMD		
326		
AMD		
AMD		

Rep. _____
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 2-12-91

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Dan McLean.

Indicate **Bill Number** and your vote **Aye** or **No.** If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
SB 404	✓	
SB 416 - amd	✓	
SB 232	✓	
SB 326 tabled	✓	
SB 163 table	✓	

SENATE BILL/AMENDMENT	*AYE*	*NO*

Rep. Mel Cook
(Signature)

HR:1993
WP/PROXY

HOUSE STANDING COMMITTEE REPORT

March 22, 1999

Mr. Speaker:

We, your committee on **Judiciary** report that **Senate Bill 232** (third reading copy -- blue) **be concurred in as amended.**

Signed: Robert Bob Clark
Representative Robert C. Clark, Chair

To be carried by Representative Shiell Anderson

And, that such amendments read:

1. Title, line 5.
Strike: "DO NOT CONSTITUTE AN ACTION FOR THE PURPOSES OF PROCEDURES"
Insert: "ARE NOT PROHIBITED BY THE ONE-ACTION LIMITATION "

2. Page 1, line 28.
Strike: "As used in this section, the term "action" does not include"
Insert: "The one-action limitation in this section does not prohibit"

3. Page 3, line 3.
Strike: "or"

4. Page 3, line 5.
Following: "(4)"
Insert: "; or
(s) for recovery of a debt or for enforcement of a right secured by a mortgage when the mortgage security in this state has become valueless through no fault of the mortgagee"

- END -

3-22 1:45

Committee Vote:
Yes 12, No 8.

641328SC.ham

AN ACT CLARIFYING THE TYPES OF ACTS OR PROCEEDINGS THAT ARE NOT PROHIBITED BY THE ONE-ACTION LIMITATION IN FORECLOSURE SUITS; AND AMENDING SECTION 71-1-222, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-222, MCA, is amended to read:

"**71-1-222. Proceedings in foreclosure suits.** (1) There is only one action for the recovery of debt or the enforcement of any right secured by a mortgage upon real estate, and that action must be in accordance with the provisions of this part. In the action, the court may, by its judgment, direct:

(a) a sale of the encumbered property ~~(~~or as much of the property as may be necessary~~)~~;

(b) the application of the proceeds of the sale, including the payment of property taxes due at the time of foreclosure; and

(c) the payment of the costs of the court, the expenses of the sale, and the amount due the plaintiff.

(2) If it appears from the sheriff's return that the proceeds are insufficient and a balance still remains due, judgment can then be docketed for the balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of the judgment debtor, as in other cases on which execution may be issued.

(3) A person holding a conveyance from or under the mortgagor of the property mortgaged or having a lien on the property, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, does not ~~need~~ have to be made a party to the action. The judgment and the proceedings are as conclusive against the party holding the unrecorded conveyance or lien as if the holding party had been made a party to the action.

(4) The one-action limitation in this section does not prohibit an act or proceeding:

(a) to appoint a receiver for or obtain possession of real or personal property collateral for the debt or other obligation;

(b) to enforce a security interest in or the assignment of any rents, issues, profits, or other income of any real or personal property;

(c) to enforce a mortgage or other lien on real or personal property collateral located outside this state that is security for the same debt or other right secured by real property in this state;

(d) to secure a judgment outside this state on a debt or other right secured by real property in this state and by real or personal property collateral located outside this state;

(e) for the exercise of a power of sale conferred pursuant to the provisions of 71-1-223 or a foreclosure by advertisement and sale pursuant to Title 71, chapter 1, part 3;

(f) for the exercise of a right or remedy under the Montana Uniform Commercial Code, except securing a judgment on a secured debt, including a deficiency judgment on a secured debt, in a court in Montana;

(g) for the exercise of a right or remedy under the uniform commercial code of another state;

(h) for claim and delivery of personal property pursuant to the provisions of Title 27, chapter 17;

(i) for the exercise of a right to set off a deposit or share account, to enforce a pledge in a deposit or share account pursuant to a written agreement or pledge, or to enforce a financial institution's statutory lien;

(j) to draw under a letter of credit;

(k) for the recovery of damages arising from the commission of a tort or the recovery of any declaratory or equitable relief;

(l) to collect a debt or enforce a right or obligation secured by a junior mortgage or other junior lien on real property if the property has been sold to satisfy, in whole or in part, a debt or other right or obligation secured by a senior mortgage or other senior lien on the property;

(m) concerning a mortgage securing a debt or right guaranteed, to enforce an agreement with a surety or guarantor of the debt or right secured by a mortgage on real estate, if the surety or guaranty obligation is not secured by the same mortgage;

(n) relating to a proceeding in bankruptcy, including filing a proof of claim, to seek relief from an automatic stay and any other action to determine the amount or validity of a debt or right or obligation secured by a mortgage;

(o) for filing a claim or to enforce a claim disallowed pursuant to the Montana Uniform Probate

Code;

(p) that does not include collection of the debt or realization of the collateral securing the debt or other obligation;

(q) that is exempted from the provisions of this section by law;

(r) to recover costs of suit, costs and expenses of sale, attorney fees, and other incidental relief in connection with any act or proceeding authorized in this subsection (4); or

(s) for recovery of a debt or for enforcement of a right secured by a mortgage when the mortgage security in this state has become valueless through no fault of the mortgagee."

- END -